

STATE OF NEBRASKA } ss  
YORK COUNTY

This Instrument was filed for record  
on July 18, 2017

at 03:14 PM, and duly  
recorded in Vol. 45 of GEN

Page 114

Instrument No. 2017-01551

*Kelly Turner*

WSJ

Fee \$ 88.00

County Clerk

## RECIPROCAL ACCESS EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS RECIPROCAL ACCESS EASEMENT AND RESTRICTIVE COVENANT AGREEMENT (“**Agreement**”) is made and entered into as of this 18 day of July, 2017 by and between **BATIS DEVELOPMENT COMPANY**, a Kansas corporation (“**Batis**”) and **AUTOZONE PARTS, INC.**, a Nevada corporation (“**AutoZone**”). Batis and AutoZone are herein collectively referred to as the “**Parties**” and individually as a “**Party**.”

### RECITALS

A. Batis is the owner in fee simple of that certain parcel of land shown as “**Lot 2**” on Exhibit A attached hereto and incorporated herein by this reference and legally described on Exhibit B attached hereto and incorporated herein by this reference, together with all of the buildings and other improvements located or to be located thereon (the “**Batis Lot**”).

B. AutoZone is the owner in fee simple of that certain parcel of land shown as “**Lot 1**” on Exhibit A attached hereto and incorporated herein by this reference and legally described on Exhibit C attached hereto and incorporated herein by this reference, together with all of the buildings and other improvements located or to be located thereon (the “**AutoZone Lot**” or “**Lot 1**”). Lot 1 and Lot 2 are herein collectively referred to as the “**Lots**” and individually as a “**Lot**.”

C. AutoZone hereby acknowledges and agrees that Batis, as “Landlord” thereunder, is in the process of negotiating a Lease Agreement (the “**Dollar Tree Lease**”) with Dollar Tree Stores, Inc. (“**Dollar Tree**”), as “Tenant” thereunder.

D. Batis and AutoZone have each agreed to grant to the other a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the portion of the “Common Access Drive” located on such party’s respective “Lot” (each as defined below), subject to and in accordance with the provisions of this Agreement.

E. Batis and AutoZone have agreed to subject their respective Lots to certain use restrictions, all as more particularly set forth herein.

**NOW, THEREFORE**, for and in consideration of the sum of \$10.00 and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and the further consideration of the performance of the respective covenants and agreements of Batis and AutoZone as hereinafter set forth, the Parties agree as follows:

### AGREEMENTS

1. **DEFINITIONS.** The following definitions shall have the meanings set forth below for purposes of this Agreement:

(a) “**Common Access Drive**” shall mean and refer to the drive constructed or to be constructed in the area shown as “30’ COMMON ACCESS EASEMENT” on Exhibit A

providing access to the Lots from Cornhusker Drive. For the avoidance of doubt, in the event all or any portion of the Common Access Drive is constructed outside of the area shown as "30' COMMON ACCESS DRIVE" on Exhibit A on either Lot, the Common Access Drive shall mean and refer to such drive as actually constructed and the easements granted by the Parties herein shall relate to the drives as constructed.

(b) "**Laws**" shall mean all applicable laws, codes, ordinances, rules, regulations and permits.

(c) "**Permittees**" shall mean the Parties and their respective tenants, subtenants, employees, customers, invitees, employees, agents, contractors, visitors, licensees and concessionaires.

2. **GRANT OF EASEMENT BY BATIS.** Batis hereby grants to AutoZone, for the benefit of AutoZone and its Permittees, a perpetual, non-exclusive easement in, to, over and across the portion of the Common Access Drive located on the Batis Lot for the purpose of providing pedestrian and vehicular ingress and egress between the Batis Lot and the AutoZone Lot, and the public streets adjacent thereto (including, without limitation, Cornhusker Drive).

3. **GRANT OF EASEMENT BY AUTOZONE.** AutoZone hereby grants to Batis, for the benefit of Batis and its Permittees, a perpetual, non-exclusive easement in, to, over and across the portion of the Common Access Drive located on the AutoZone Lot for the purpose of providing pedestrian and vehicular ingress and egress between the Batis Lot and the AutoZone Lot, and the public streets adjacent thereto (including, without limitation, Cornhusker Drive).

4. **COVENANTS AND CONDITIONS.** Notwithstanding anything in this Agreement to the contrary, Batis and AutoZone hereby agree that their respective rights under this Agreement shall be subject to, and each Party hereby agrees to comply with and abide by, the following covenants, conditions and restrictions with respect to its Lot (at such Party's sole cost and expense):

(a) each Lot shall at all times independently contain at least the number of parking spaces required by applicable Laws in connection with the uses on such Lot. Subject to the foregoing, each Party shall have the right to reconfigure the parking areas, drive aisles and other improvements on its Lot from time to time, provided such reconfiguration does not materially, adversely affect the use of the Common Access Drive as contemplated hereunder.

(b) the access easements provided herein shall be utilized for the access and passage of passenger vehicles only, and shall not be used for commercial vehicles, except for delivery vehicles in connection with the operation of businesses on the Lots and construction vehicles in connection with the performance of maintenance or construction work on the Lots.

(c) neither Party shall place any obstruction in the Common Access Drive or otherwise do anything or perform any act that would materially obstruct the free flow of pedestrian and vehicular traffic over, in and across the Common Access Drive, except temporarily during the maintenance, repair and/or replacement of the improvements in such areas or as otherwise required by applicable Law.

(d) no Party or its Permittees shall be charged for the right to use the portion of the Common Access Drive on the other Party's Lot.

(e) neither Party nor its Permittees shall exercise its rights hereunder in any manner that would constitute a surcharge on the easement(s) granted hereunder or grant any other party the same or similar easement rights if the same would result in a surcharge on the easement on its Lot.

5. **MAINTENANCE OF COMMON ACCESS DRIVE.** Subject to the other provisions of this Agreement, each Party shall at its sole cost and expense maintain the Common Access Drive on its Lot in good order, appearance and repair (including replacements, if necessary) in a manner typically provided for in a shopping center comparable to the Project (including, but not limited to, all necessary patching, resurfacing, and restriping of the parking areas, driveways, etc.), provide adequate lighting thereof, and promptly remove all snow, dirt and debris therefrom, and shall restore the same following any casualty damage thereto or condemnation thereof. All maintenance, alterations, repairs, restoration and replacements to the Common Access Drive shall be begun and completed within a reasonable time. All such work to be performed by either Party shall be done in a manner so as to minimize inconvenience to and interference with the use of the easements granted hereunder and the operation of the businesses on the other Party's Lot and in the Project as a whole.

6. **INSURANCE; MUTUAL INDEMNITY.**

(a) **Insurance.** Batis and AutoZone shall each maintain in effect policies of commercial general liability insurance covering their indemnification obligations in Section 6(b) below and shall name each other as additional insureds with regard to the reciprocal access easements granted herein. Each such policy shall provide a combined bodily injury, death and property damage limit of not less than a combined single limit of \$2,000,000 per occurrence, inclusive of umbrella coverage, and \$2,000,000, annual aggregate. Beginning on the tenth (10<sup>th</sup>) anniversary of the date hereof and not more often than every ten (10) years thereafter, at the request of either Party, the amount of such policies may be increased to the then-existing market level of liability insurance then required by prudent parties to similar reciprocal access easements. Upon request, a Party shall provide the other Party with a certificate of insurance required by this Agreement.

(b) **Mutual Indemnity.** Each Party hereto (the "**Indemnifying Party**") shall indemnify and hold the other Party hereto (the "**Indemnified Party**") harmless from any and all claims, liability, loss, damage, expense, actions, suits, proceedings, or judgments, including reasonable attorney's fees (collectively, "**Losses**"), arising from third-party claims of injury to or death of persons or damage to property (collectively, "**Claims**")

arising from the use of the easements contained herein by the Indemnifying Party or its Permittees, or a breach or default under the terms or provisions of this Agreement by the Indemnifying Party, except to the extent caused by the negligence or intentional misconduct of the Indemnified Party or its Permittees.

**7. USE RESTRICTIONS.**

(a) Batis and AutoZone hereby covenant and agree that neither Party nor such Party's respective Permittees shall use or permit the use of all or any portion of such Party's Lot for any of the uses set forth on Exhibit D attached hereto and incorporated herein by this reference.

(b) AutoZone further acknowledges and agrees that Dollar Tree and its permitted assigns under the Dollar Tree Lease shall be intended third-party beneficiaries of the provisions of this Section 7 and Dollar Tree and such assigns shall have the right to enforce the same directly against AutoZone or any tenant or occupant of Lot 1 operating for any of the uses prohibited under Exhibit D; provided, however, the provisions of this subsection 7(b) shall only apply during the term of the Dollar Tree Lease.

Notwithstanding the foregoing, Section 7(b) hereinabove shall only be effective upon full execution of the Dollar Tree Lease by Batis and Dollar Tree.

**8. COVENANTS RUNNING WITH THE LAND.**

(a) The reciprocal easements and rights hereby created, and all the covenants, agreements and provisions of this Agreement, including both the benefits and burdens, shall be continuing rights and covenants running with fee title to the Lots, and shall bind and inure to the benefit of the Parties hereto and their respective successors and assigns in ownership of fee title to the Lots.

(b) The reciprocal easements granted in this Agreement are intended to be easements appurtenant to the Batis Lot and the AutoZone Lot, as applicable, and the respective estates of Batis and AutoZone therein, and are not easements in gross. Except as expressly set forth herein, no easements, licenses or other rights of access, use or occupancy are created or reserved hereby with respect to either Lot, and nothing herein shall be construed as permitting any Party hereto, or its permitted successors or assigns, to use or occupy any portion of the Lot of the other Party to this Agreement.

9. **AMENDMENT.** Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, amended or modified orally, or in any manner other than by an instrument in writing signed by Batis and AutoZone or their respective successors or assigns.

10. **WAIVER.** Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent and the breach of any covenant by any party shall not release or discharge them from their obligations hereunder. No

delay or omission by any party to exercise its rights accruing upon any noncompliance or failure of performance by any party shall impair any such right or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements to be performed by any other party shall not be construed to be a waiver of any succeeding breach or of any covenants, conditions or agreements contained herein.

11. **BINDING EFFECT; DEDICATION.** This Agreement shall be binding upon and inure to the benefit of Batis and AutoZone, and their respective successors and assigns. Notwithstanding the foregoing, each Party shall be responsible only for the obligations, indemnities, duties, liabilities and responsibilities set forth in this Agreement that accrue during the period of time during which such Party holds fee simple title to a Lot or portion thereof. Upon conveyance of a Lot or a portion thereof, the Party making such conveyance shall be relieved from the obligations, duties, indemnities and responsibilities hereunder arising from and after the date of such conveyance as to such Lot, or portion thereof conveyed, and the successor Party shall become obligated hereunder for all matters arising from and after the date of conveyance. Upon the conveyance or dedication of any of the easements created hereunder, the facilities located therein, and the real property burdened thereby, to the appropriate governmental authority, such governmental authority shall take title to any property so conveyed or dedicated free and clear of any obligations, duties, indemnities, liabilities and responsibilities created by this Agreement.

12. **SUBORDINATION OF LIENS.** Each Party hereto agrees that all mortgages, deeds of trust, deeds to secure debt and other encumbrances placed upon each Party's respective property shall be subordinate and inferior to the easements created by this Agreement, and to the extent that any such mortgages, deeds of trust, deeds to secure debt or other encumbrances presently exist, each Party shall have all necessary Parties execute the subordination agreement attached hereto as **Exhibit D** which shall be recorded in conjunction herewith.

13. **NOTICES.** All notices, demands and requests (collectively, the "Notice") required or permitted to be given under this Agreement must be in writing and shall be delivered either in person, or by express, certified or registered mail, with return receipt requested and all postage and fees prepaid, or by commercial overnight courier delivery, or by all or any combination of the above. Any such notice shall be considered given on the earliest date of: actual receipt, or the first attempted delivery if delivery shall be refused. Any notice from counsel for either Party shall be deemed an official notice from such Party. Such notice shall be given the Parties hereto at the following addresses. Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America. The initial address of the Parties shall be:

To Batis:	Batis Development Company 2933 SW Woodside Dr., Ste. 200 Topeka, KS 66614 Attn: Mark Wittenburg, President 785-272-4400 markw@batisdev.com
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Copy to: Rita D'Agostino, Esq.  
Spencer Fane LLP  
9401 Indian Creek Parkway, Suite 700  
Overland Park, KS 66211  
913-327-5137  
rdagostino@spencerfane.com

To AutoZone: AutoZone, Inc.  
P.O. Box 2198, 3<sup>rd</sup> Floor  
Memphis, TN 38101-2198  
Attn: Melanie Overman  
(901) 495-8785  
Melanie.Overman@AutoZone.com

If by Overnight  
(or 2<sup>nd</sup> day) Courier: AutoZone, Inc.  
123 S. Front Street, 3<sup>rd</sup> Floor  
Memphis, TN 38103-2107  
Attn: Melanie Overman

14. **DEFAULT AND REMEDIES.** In the event any Party fails to perform the maintenance, repair or other obligations required by this Agreement, or otherwise breaches any term, covenant or condition of this Agreement, the non-defaulting Party may notify the defaulting Party and shall specify the deficiencies in the work or the breach. If such deficiencies are not corrected, or the breach not cured, within ten (10) days after receipt of such notice, then the non-defaulting Party shall have the right to: (i) in the event such breach relates to the failure to perform the maintenance, repair and other obligations under this Agreement, to correct such deficiencies or perform such work (even if such work must be undertaken on the defaulting Party's Lot), and recover all costs and expenses related thereto, including court costs and attorneys' fees, from the defaulting Party, or (ii) pursue all rights and remedies under this Agreement, at law or in equity, with respect to such breach. If the failure to perform or breach is regarding the maintenance of the Common Access Drive and such maintenance cannot reasonably be completed within a 10-day period, then the non-defaulting Party's right to exercise self-help hereunder shall be delayed for so long as the defaulting Party is using diligent, good-faith efforts to complete such maintenance (but in no event more than an additional 20 days after the expiration of the above-described 10-day period). Notwithstanding the foregoing, in the event that the failure to perform the work, or failure to perform the work in the manner required in this Agreement or the breach of this Agreement, creates an imminent danger of damage to persons or properties, or jeopardizes the continuance of business operations on any Lot, no notice shall be required prior to the non-defaulting Party commencing such work or commencing a cure. Any amounts due and payable to a Party pursuant to this Agreement shall be paid within twenty (20) days from the date the other Party is notified of the amounts due. Any amounts not paid when due shall bear interest at a rate equal to the lesser of (i) twelve percent (12%) per annum, or (ii) the maximum rate of interest permitted by law. The failure to pay any amounts due pursuant to

this Agreement shall not entitle any Party to file a lien or claim of lien against the Lot owned by the delinquent Party.

15. **COSTS AND ATTORNEY'S FEES.** If any Party hereto shall bring any suit or other action against another Party hereto for relief, declaratory or otherwise, arising out of this Agreement, the Parties shall pay their own attorney's fees, but the losing Party shall pay the prevailing Party's actual, reasonable costs and expenses of suit.

16. **GOVERNING LAW.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nebraska, without giving effect to principles and provisions thereof relating to conflict or choice of laws. Venue for any action under this Agreement shall lie in York County, Nebraska.

17. **DOCUMENTS.** Each Party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

18. **ENTIRE AGREEMENT.** This Agreement (and any attached exhibits) contains the entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. Any and all prior discussions, negotiations, commitments and understandings relating thereto are merged herein. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the Parties that are not referenced herein. This Agreement shall be filed of record.

19. **SEVERABILITY.** In the event any term or provision of this Agreement is determined by an appropriate judicial authority to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been inserted herein.

20. **HEADINGS.** The section or paragraph headings shown in this Agreement are for convenience of reference only and shall not be held to explain, modify, simplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

21. **COUNTERPARTS.** This Agreement may be signed in counterparts, any one of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

22. **NO DEDICATION TO PUBLIC; NO THIRD-PARTY BENEFICIARIES.** The rights and easements created and granted hereunder shall be appurtenant to and shall run with fee title to the Lots. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Batis Lot or the AutoZone Lot to the general public or for the general public or for any public purpose, it being the intention of the Parties hereto that this Agreement shall be

strictly limited to and for the purposes herein expressed. Except as expressly set forth in this Agreement, this Agreement is not intended to confer upon any person or entity, other than the Parties hereto and their respective successors and assigns in ownership of fee title to the Batis Lot and the AutoZone Lot, respectively, any rights or remedies hereunder.

23. **RIGHT TO DEVELOP LOTS AND GRANT ADDITIONAL EASEMENTS.** Subject to the provisions, limitations and restrictions specifically set forth in this Agreement, Batis and AutoZone specifically reserve the right to develop their respective Lots and demolish, construct, reconstruct, alter or reconfigure the building(s) and/or other improvements thereon, and to grant additional easements or rights-of-ways upon, over, along or across their respective Lots, as applicable, to such other persons or entities or for such purposes as the granting Party may desire, or to use the area covered by the easements granted herein over such Party's Lot for other purposes, provided that Batis and AutoZone, respectively, shall not be unreasonably disturbed in the use and enjoyment of the easements and rights hereby granted.

24. **RECITALS.** The Recitals set forth above shall be incorporated herein by reference.

25. **EXHIBITS.** The following Exhibits attached to this Agreement are incorporated herein by this reference for all purposes and shall be considered a part of this Agreement:

- Exhibit A – Site Plan
- Exhibit B – Legal Description of the Batis Lot
- Exhibit C – Legal Description of the AutoZone Lot
- Exhibit D – Prohibited Uses

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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

**BATIS:**

**Batis Development Company,**  
a Kansas corporation

By: J. Mark Wittenburg

Name: J. Mark Wittenburg

Title: President

Date Executed: 7/17/17

STATE OF KANSAS )  
 ) ss.  
COUNTY OF SHAWNEE )

On 7/17/17, before me, Tara Ann Nicholas a Notary Public in and for said state, personally appeared J. Mark Wittenburg the President of **Batis Development Company**, a Kansas corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Tara Ann Nicholas  
Notary Public in and for said State

My Commission Expires: 7/10/19



Notary Public - State of Kansas  
TARA ANN NICHOLAS  
Commission Expires 7/10/19

**AUTOZONE:**

**AutoZone Parts, Inc.,**  
a Nevada corporation

By: [Signature]

Name: John S. Murphy

Title: Vice President

Date Executed: 7/14/2017

By: [Signature]

Name: Jennie E. Anderson

Title: VP, Store Ops Support

Date Executed: 7/14/2017

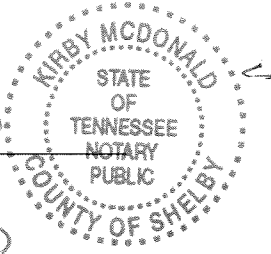
STATE OF Tennessee )

COUNTY OF shelby ) ss.

On July 14, 2017, before me, Kirby McDonald, a Notary Public in and for said state, personally appeared ~~Timothy J. Goddard~~ John S. Murphy and Jennie E. Anderson the Vice President and Vice President of **AutoZone Parts, Inc.**, a Nevada corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

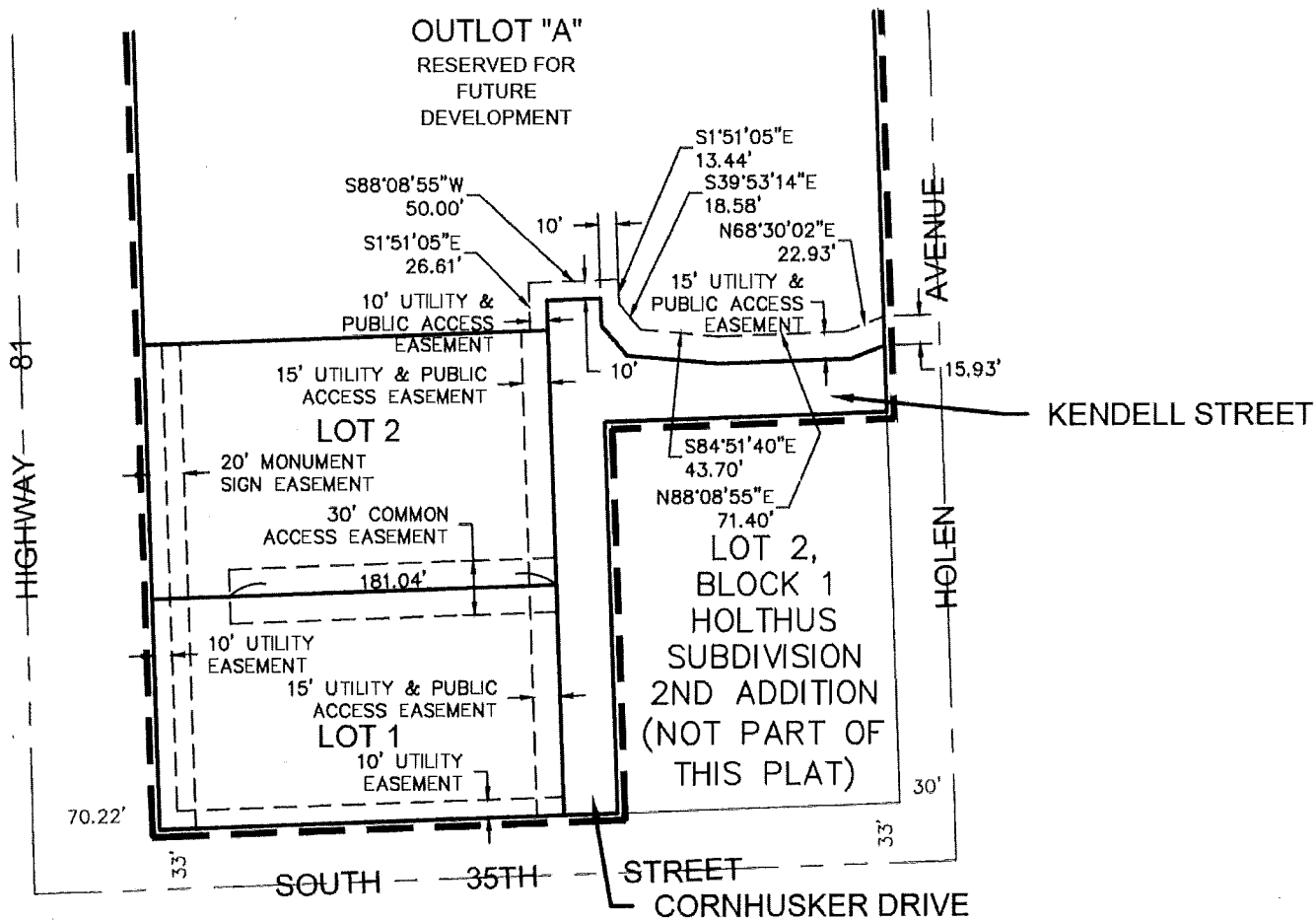
[Signature]  
Notary Public in and for said State



My Commission Expires: 07-14-20

**APPROVED, VERIFIED AND PASSED FOR SIGNING**  
[Signature]

**EXHIBIT A  
SITE PLAN**



**EASEMENT DETAIL**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF BATIS LOT**

Lot Two (2), Holthus Subdivision 3rd Addition, City of York, York County, Nebraska in the records of York County, Nebraska.

**EXHIBIT C**  
**LEGAL DESCRIPTION OF AUTOZONE LOT**

Lot One (1), Holthus Subdivision 3rd Addition, City of York, York County, Nebraska in the records of York County, Nebraska.

**EXHIBIT D**  
**PROHIBITED USES**

1. A flea market;
2. A pawn shop;
3. A bar, pub, nightclub, music hall or disco in which less than 50% of the space or 50% of the revenue is devoted to and derived from food service;
4. A bowling alley, billiard, pool or bingo parlor;
5. An arcade, pinball or computer game room (provided that retail facilities which are otherwise not prohibited or restricted may operate no more than six (6) such electronic games incident to their primary business);
6. A facility for the sale or rental of used goods (including thrift shops, secondhand or consignment stores);
7. A training or educational facility (including, without limitation, a beauty school, barber college, reading room, driving school, or other facility catering primarily to students or trainees rather than customers);
8. A massage parlor (which shall not be construed to mean a business of the type commonly referred to as a "day spa");
9. A funeral home;
10. A gymnasium, sport or health club;
11. A facility for the sale of paraphernalia for use with illicit drugs;
12. A marijuana dispensary;
13. A facility for the sale or display of pornographic material;
14. A lingerie bar, "go go" bar or other similar establishment;
15. A Laundromat;
16. An off-track betting parlor;
17. A carnival, amusement park or circus;
18. A gas station, car wash or auto repair or body shop;
19. A facility for the sale of new or used motor vehicles, motorcycles, trailers or mobile homes;
20. A skating rink;
21. A banquet hall, auditorium or other place of public assembly;
22. A hotel or residential facility;
23. A theater of any kind; or
24. Other non-retail uses except for office or storage facilities incidental to a primary retail operation.